



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FLB CONSTRUCTION, FIDEL G.R. No. 194931
BERMUDEZ, AND MARLY
BERMUDEZ,

Petitioners,

Present:

- versus -

SUSANA TRINIDAD, ALICIA
PERDIDO AND DANIEL
SEBASTIAN,

Respondents.

LEONEN, Chairperson
CAGUIOA,*
CARANDANG,
ZALAMEDA, and
DIMAAMPAO,** JJ.

Promulgated:

October 6, 2021

MisADC Batt

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DECISION

ZALAMEDA, J.:

This Petition for Review (Petition) seeks to reverse and set aside the Decision dated 19 July 2010 and Resolution dated 16 December 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 108772 affirming with modification the decision of the National Labor Relations Commission (NLRC) in favor of respondents.

FLB Construction Corporation (FLB), Fidel Bermudez (Fidel) and Marlyn Bermudez (Marlyn; collectively, petitioners) hired Susana Trinidad,

* Rosario, J., took no part due to his prior participation in the Court of Appeals; Caguioa, J., designated additional Member per Raffle dated 25 August 2021.

** Dimaampao, J., designated additional member per Special Order No. 2839 dated 16 September 2021.

Alicia B. Perdido and Daniel Sebastian (respondents) on various dates and for the following corresponding positions and salary, to wit:

Name	Date of Employment	Position	Salary
Alicia Perdido	February 1978	Secretary	Php13,600.00
Daniel Sebastian	16 October 1980	Draftsman/Project Coordinator	Php12,300.00
Susana Trinidad	10 May 1995	Accounting Clerk	Php11,600.00

According to respondents, they were dismissed from employment on 14 July 2006. Hence, on 17 July 2006,¹ respondents filed a complaint for non-payment of wages, 13th month pay and claim for separation pay before the NCR Regional Office of the Department of Labor and Employment (DOLE). The complaint was later forwarded to the Arbitration Branch.

Respondents further alleged that sometime in April 2005, Fidel, in his capacity as President of FLB, assured them that the company shall settle all unpaid salaries and SSS/Philhealth payments upon collection of its receivables from CEZA. Fidel also informed them of the company's plan to engage in the container van warehousing business at the Harbor Center. When the company received its collectibles from CEZA in May 2005, the company treasurer, Marlyn, refused to pay their salaries since the amount collected will be invested in the van warehousing business. Respondents were later informed to stop reporting for work effective 15 May 2006. Despite repeated demands, petitioners failed to pay their unpaid salaries, 13th month pay and separation pay.

Meanwhile, petitioners denied the allegation that respondents were illegally dismissed. They claimed that the company has been experiencing financial losses over the years due to lack of construction projects. To alleviate losses, they adopted cost cutting measures and proposed a periodic shifting of work schedules for respondents sometime in the middle of 2006. Respondents objected to said proposal since they wanted to have the same work schedules. Sometime in 2006, respondents stopped reporting for work and abandoned their jobs without proper notice to petitioners. However, at the time of filing of their position paper before the Labor Arbiter on 08 January 2007, petitioners alleged that their office is currently closed for lack of projects. They also do not have any remaining employees.

Ruling of the LA

¹ CA rollo, p. 17.

On 28 March 2007, the Labor Arbiter (LA) rendered a decision awarding respondents their money claims for unpaid salaries from February to July 2006 and 13th month pay for the years 2005 and 2006 in the total amount of Php249,031.24 broken down as follows:

Alicia Perdido	Php 90,315.33
Daniel S. Sebastian	81,682.25
Susana P. Trinidad	77,033.66
TOTAL	Php249,031.24

As ruled by the LA, petitioners failed to show proof it had paid respondents their salaries for the period of February to July 2006 and their 13th month pay for 2005 and 2006. They did not present their payroll to controvert respondents' claim they had not received said benefits. However, since petitioner company had already closed its business due to lack of projects, respondents are not entitled to separation pay.

Ruling of the NLRC

The NLRC dismissed petitioners' appeal for lack of merit. It agreed with the Labor Arbiter that petitioners, as the employer, has the burden to prove payment of benefits to its employees.

Ruling of the CA

The CA affirmed the award of monetary claims but modified the decision of the NLRC by declaring respondents were illegally dismissed, to wit:

WHEREFORE, the petition for certiorari is **DISMISSED**. The assailed *Decision* dated November 28, 2009 of public respondent in NLRC NCR CA No. 052647-07(7) (NCR-09-07835-2006), directing petitioners to pay private respondents Alicia Perdido, Daniel Sebastian and Susana Trinidad their money claims in the total amount of TWO HUNDRED FORTY-NINE THOUSAND THIRTY-ONE (P249,031.24) PESOS and 24/100 CENTAVOS, is **AFFIRMED** with the **MODIFICATION** that private respondents are declared to have been illegally dismissed, and that petitioners are directed to pay private respondents backwages computed from the time of their dismissal up to the date of finality of this decision plus separation pay.

SO ORDERED.

The CA found no merit in petitioners' claim that respondents abandoned their work. It also took note of the fact that petitioners closed shop due to lack of construction projects. Hence, it ruled that respondents were illegally dismissed from employment due to closure of petitioners' business. Petitioners failed to show their closure was *bona fide* since there was no written notice sent to DOLE. Petitioners also failed to submit financial statements prepared by independent auditors, balance sheets or annual income tax returns.

Ruling of the Court

The Petition lacks merit.

This Court's power of review over labor cases in a petition for review under Rule 45 of the Rules of Court is limited to the correctness of the CA's findings on the existence, or lack, of grave abuse of discretion committed by the NLRC. To justify the grant of an action for *certiorari*, it must be shown that the NLRC gravely abused the discretion conferred upon it. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.²

Based on the foregoing considerations, the Court fails to see how the CA erred in finding a lack of grave abuse of discretion on the part of the NLRC when it affirmed the ruling of the Labor Arbiter awarding the monetary claims of respondents. Once an employee has set out with particularity in his complaint, position paper, affidavits or other documents the labor standard benefits he is entitled to, and which he alleged for the employer to have failed in paying him, it becomes the employer's burden to prove it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.³

Indeed, the pertinent personnel files, payrolls, remittances and other similar documents showing that rightful benefits have been paid to the employee are not in the possession of the worker but in the custody and absolute control of the employer.⁴ Hence, the burden to prove payment of worker benefits falls on petitioners, who, in this case, failed to proffer any

² *Symex Security Services, Inc. v. Rivera, Jr.*, 820 Phil. 653 (2017) [Per J. Caguioa].

³ *De Guzman v. National Labor Relations Commission*, 564 Phil. 600 (2007) [Per J. Puno].

⁴ *Galang v. Land Bank of the Phils.*, 665 Phil. 37 (2011) [Per J. Villarama, Jr.].



evidence showing the contrary. The consistent findings of the CA, the NLRC and the Labor Arbiter anent the payment of respondents' monetary claims should therefore be upheld.

Anent the charge of illegal dismissal, the facts, as alleged by respondents, coupled with the evidence on record do not establish that respondents were dismissed from employment. To emphasize, before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.⁵

In this case, respondents alleged that petitioners informed them to stop reporting for work effective 15 May 2006. Yet, they claimed to have been dismissed from employment on 14 July 2006 without any clarification as to the events transpiring during the interval on said dates. More importantly, respondents never gave details as to how or why they were exactly dismissed on 14 July 2006. Even after having scoured the records of the case, the Court finds a dearth of evidence showing respondents were actually dismissed from their employment on 14 July 2006 as they have alleged. Indeed, respondents never showed any notice of termination nor did they allege being barred to report for work.⁶ Even in the complaint they personally filled-up before the Department of Labor and Employment (DOLE), respondents did not allege illegal dismissal as a cause of action and only asked for the payment of unpaid wages, 13th month pay and separation pay.⁷

At the same time, however, the Court cannot give credence to petitioners' contention that respondents abandoned their work. Abandonment, as a cause for dismissal, is a form of neglect of duty characterized by the deliberate and unjustified refusal of an employee to resume his employment. For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.⁸

Petitioners failed to show the overt act of respondents showing their clear intention to sever their employment. Mere absence or failure to work,

⁵ *Doctor v. NII Enterprises*, 821 Phil. 251 (2017) [Per J. Leonardo-De Castro].

⁶ *Moll v. Convergys Philippines, Inc.*, G.R. No. 253715, 28 April 2021 [Per J. Lazaro-Javier].

⁷ CA rollo, pp. 32-33.

⁸ *Robustan, Inc. v. Court of Appeals*, G.R. No. 223854, 15 March 2021 [Per J. Leonen].

even after a notice to return to work has been served, is not enough to amount to an abandonment of employment.⁹ Since return-to-work orders were not even issued in this case, We find no reversible error on the part of the CA in ruling out petitioners' defense of abandonment.

In cases where there is both an absence of illegal dismissal on the part of an employer and an absence of abandonment on the part of employees, the remedy is reinstatement but without backwages.¹⁰ Considering the cessation of operations of petitioner company shortly after the filing of respondents' complaint, respondents' reinstatement becomes a legal impossibility. The payment of separation pay in lieu of reinstatement is therefore proper.¹¹

The Court refers to the case of *Consolidated Distiller of the Far East, Inc. v. Zaragoza*,¹² in determining the period for computation of separation pay at the rate of one (1) month salary per year of service. In said case, the Court ruled that the employer must prove the closure of its business in full and complete compliance with all statutory requirements prior to the date of the finality of the award of backwages and/or separation pay in order to have the separation pay be computed until the date of actual closure of business. Otherwise, the separation pay shall be computed until the finality of the resolution or decision of the Court.

Here, We agree with the CA that petitioners failed to prove its closure was *bona fide*. Petitioners did not show proof it served written notices to its workers and to the DOLE at least one (1) month before the intended date of closure of its business establishment. Moreover, petitioners failed to substantiate its claim that their closure was due to heavy financial losses. They did not submit financial statements prepared by independent auditors, balance sheets showing profit and loss, or annual income tax returns. In fact, there is nothing on record to prove that petitioners incurred substantial losses leading to its closure of business. Thus, respondents are entitled to separation pay from the time of their employment until the finality of this Resolution. The award of backwages should, however be deleted.

The Court maintains the liability of spouses Fidel Bermudez and Marlyn Bermudez, who are officers of FLB, for the monetary awards due to respondents. In labor cases, the Court has held corporate directors and officers solidarily liable with the corporation's debt if he or she willfully and knowingly assents to patently unlawful acts of the corporation. Personal liability also attaches if the director or officer is guilty of gross negligence or

⁹ *Id.*

¹⁰ *Santos, Jr. v. King Chef*, G.R. No. 211073, 25 November 2020 [Per J. Hernando].

¹¹ *Consolidated Distiller of the Far East, Inc. v. Zaragoza*, 833 Phil. 888 (2018) [Per J. Caguioa].

¹² *Id.*; see also *Olympia Housing, Inc. v. Lapastora*, 778 Phil. 189 (2016) [Per J. Reyes].

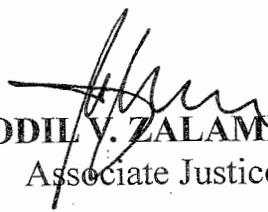


In the case at bar, Fidel Bermudez and Marlyn Bermudez, as FLB's President and Treasurer, respectively, refused to pay respondents their wages and 13th month pay since they decided to reinvest the corporation's earnings in another project. Considering the impending closure of FLB, they also seemed to have no inkling of paying respondents their separation pay knowing fully well that they have not dismissed respondents from employment. It does not escape the Court's notice that respondents have been serving petitioners for at least ten (10) years. In the case of Alicia Perdido, she had been in petitioners' employ for 27 years. Respondents, thus, truly deserve to receive their separation pay. Besides, Fidel Bermudez and Marlyn Bermudez never questioned their solidary liability from the time of filing of the complaint until the case reached this Court.

Finally, the monetary benefits due to respondents shall earn legal interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

WHEREFORE, the present Petition is hereby **DENIED**. The Decision dated 19 July 2010 and Resolution dated 16 December 2020 of the Court of Appeals in CA-G.R. SP No. 108772 are **AFFIRMED** with **MODIFICATION**. Petitioners are **ORDERED** to pay respondents their monetary claims in the total amount of Php249,031.24 as computed in the Decision dated 28 March 2007 of the Labor Arbiter. Respondents are also entitled to the payment of separation pay computed from the time of their employment until the finality of this Decision at the rate of one (1) month salary for every year of service. The award of backwages in favor of respondents is deleted. The monetary awards due to respondents shall earn legal interest at the rate of 6% *per annum* from finality of this Decision until fully satisfied.

SO ORDERED.

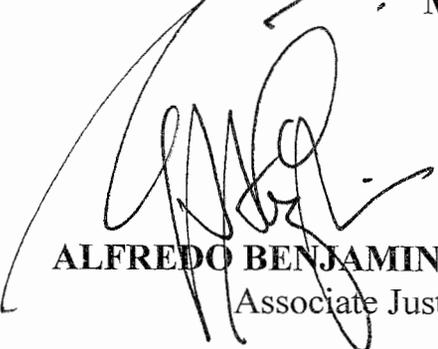

RODILY V. ZALAMEDA
Associate Justice

WE CONCUR:



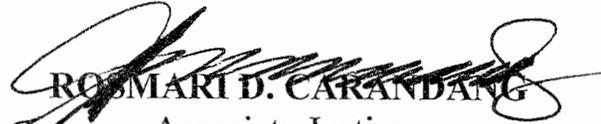
MARVIC M.V.F. LEONEN

Associate Justice
Chairperson



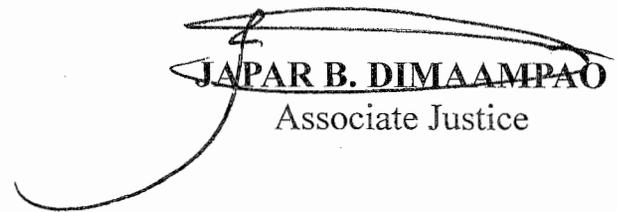
ALFREDO BENJAMIN S. CAGUIOA

Associate Justice



ROSMARI D. CARANDANG

Associate Justice

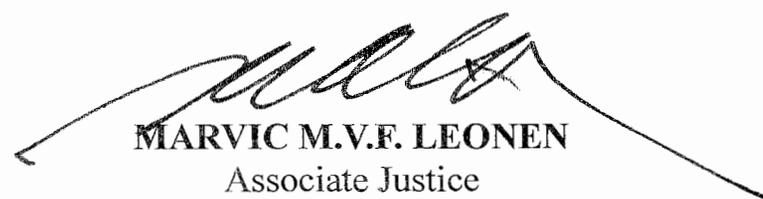


JAPAR B. DIMAAMPAO

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



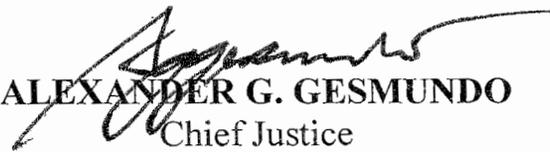
MARVIC M.V.F. LEONEN

Associate Justice
Chairperson



CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

